



imprisonment. Defendant appealed this Court's judgment, and that appeal remains pending before the Fourth Circuit.

Defendant now asks this Court to reduce his sentence in case number 3:02-cr-6-MOC based on Amendment 821 to the Sentencing Guidelines. The Court asked the Government to respond to Defendant's motion in case number 3:02-cr-6-MOC and consider whether Defendant is eligible for sentence reduction in case number 3:17-cr-88-MOC.

## **II. Legal Standard**

Amendment 821 to the Sentencing Guidelines made two changes to chapter 4 of the Sentencing Guidelines related to a defendant's criminal history. See U.S.S.G. amend. 821. The Sentencing Commission has made Part A and Part B, Subpart 1, of Amendment 821 retroactively applicable, authorizing eligible defendants to seek a discretionary sentence reduction under 18 U.S.C. § 3582(c)(2). U.S.S.G. amend. 825; see U.S.S.G. § 1B1.10(d).

Part A of the amendment alters Sentencing Guidelines § 4A1.1 to strike the two status points previously assessed under § 4A1.1(d) for defendants who committed their offense while under any criminal-justice sentence, including probation, parole, supervised release, imprisonment, work release, or escape status. Id. pt. A. Part A adds a new subsection (e) that adds one criminal-history point for any defendant who receives 7 or more points and who committed his offense while under any criminal-justice sentence as described above. Id.

Part B, Subpart 1, of Amendment 821 adds a new guideline provision to chapter four, U.S.S.G. § 4C1.1. This new guideline authorizes a two-offense-level decrease if a defendant has (1) zero criminal-history points, and (2) did not receive a terrorism adjustment under U.S.S.G. § 3A1.4; (3) did not use violence or credible threats of violence in connection with the offense; (4) the offense did not result in death or serious bodily injury; (5) the offense was not a sex offense;

(6) did not personally cause substantial financial hardship; (7) did not possess, receive, purchase, transport, transfer, sell, or otherwise dispose of a firearm or other dangerous weapon in connection with the offense; (8) the offense was not an offense involving individual rights covered by U.S.S.G. 2H1.1; (9) did not receive an adjustment under § 3A1.1 (Hate Crime Motivation or Vulnerable Victim) or § 3A1.5 (Serious Human Rights Offense); and (10) did not receive an adjustment under § 3B1.1 (Aggravating Role) and was not engaged in a continuing criminal enterprise, as defined in 21 U.S.C. 848. U.S.S.G. 4C1.1.

For defendants who meet the requirements of Amendment 821, Sentencing Guidelines § 1B1.10 governs eligibility for a sentence reduction. Section 1B1.10(a)(1) authorizes a district court generally to reduce a defendant's sentence in any case in which a defendant is serving a term of imprisonment and the guideline range applicable to the defendant "has subsequently been lowered as a result" of a retroactively applicable amendment to the Guidelines." A defendant is not eligible for a sentence reduction if the retroactively applicable amendment "does not have the effect of lowering the defendant's applicable guideline range." U.S.S.G. § 1B1.10(a)(2)(B). A court is limited to a reduction to the bottom of the amended guideline range, after calculating the range that would have applied had the guideline amendment been in effect when the defendant was sentenced. Id. § 1B1.10(b)(2). In calculating the amended range, "the court shall substitute only" the retroactively applicable guideline amendment and "leave all other guideline application decisions unaffected." Id. § 1B1.10(b)(1). If the defendant received a sentence below the applicable guideline range based on a motion filed by the United States for substantial assistance, the court may reduce the defendant's sentence to a term "comparably less than the amended guideline range." Id. § 1B1.10(b)(2)(B). Under no circumstances shall a

defendant's sentence be reduced to a term less than the term he has already served. Id. § 1B1.10(b)(2)(C).

### **III. Discussion**

Defendant is ineligible for sentence reduction in case number 3:02-cr-6-MOC. He has already served his custodial sentence in that case, so there is no sentence to reduce.

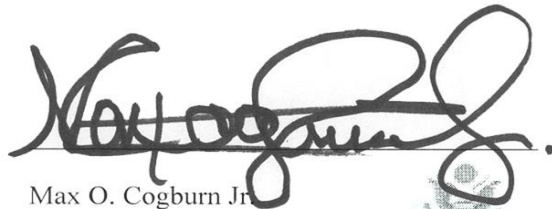
While Defendant may be eligible for sentence reduction in case number 3:17-cr-88-MOC, this Court lacks jurisdiction to decide Defendant's motion. That is because Defendant appealed this Court's judgment in case number 3:17-cr-88-MOC, and that appeal remains pending before the Fourth Circuit. "[A] timely filed notice of appeal transfers jurisdiction of a case to the court of appeals and strips a district court of jurisdiction to rule on any matters involved in the appeal." (3:17-cr-88-MOC, Doc. No. 45 at 1) (quoting Doe v. Public Citizen, 749 F.3d 246, 258 (4th Cir. 2014)). Because Defendant's appeal challenges the sentence this Court imposed in case number 3:17-cr-88-MOC, this Court lacks jurisdiction to rule on any motion to reduce that sentence while Defendant's appeal remains pending.

Therefore, Defendant's motion to reduce sentence in both cases must be denied.

### **ORDER**

**IT IS, THEREFORE, ORDERED** that Defendant's motion to reduce sentence (Doc. No. 37) is **DENIED**.

Signed: April 4, 2024



Max O. Cogburn Jr.  
United States District Judge